

ASSEMBLY BILL

No. 1156

Introduced by Assembly Member Brown

February 27, 2015

An act to amend Sections 1170, 1170.3, 3451, 4852.01, 4852.03, 4852.04, 4852.06, 4852.1, and 4852.21 of the Penal Code, and to amend Section 41500 of the Vehicle Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1156, as introduced, Brown. Imprisonment in county jail.

(1) Existing law authorizes a court to recall a sentence of imprisonment in the state prison and to resentence a defendant in the same manner as if the defendant had not previously been sentenced, upon the court's own motion or the recommendation of the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings. Existing law prohibits the new sentence from being greater than the initial sentence and requires that credit be given for time served. Existing law provides for the resentencing or recalling of a prisoner's sentence if the court finds that the prisoner is terminally ill or the prisoner is permanently medically incapacitated, as prescribed.

This bill would similarly authorize the court to recall a sentence of imprisonment in a county jail for a felony, upon the court's own motion or the recommendation of the county correctional administrator, as specified. The bill would also extend the provisions for recall or resentencing for medical reasons to prisoners sentenced to county jail for a felony. By increasing the duties of county correctional administrators, this bill would impose a state-mandated local program.

(2) Existing law requires the Judicial Council to adopt rules providing criteria for the consideration of the trial judge at the time of sentencing, including the imposition of the lower, middle, or upper prison term.

This bill would require the Judicial Council to also adopt rules providing criteria for the imposition of the lower, middle, or upper term for a person sentenced to county jail for a felony and rules to determine the county or jurisdictional territory of incarceration when the court is imposing a sentence in county jail concurrent or consecutive to a sentence previously imposed in another county or jurisdictional territory.

(3) Existing law provides that a person convicted of a felony who is committed to a state prison or other state institution or agency may file a petition for a certificate of rehabilitation and pardon upon completion of a specified period of rehabilitation. Existing law provides that the period of rehabilitation commences to run upon the discharge from custody for completion of the sentence term or upon the release on parole or probation, whichever is sooner. Existing law also requires that any person to whom these provisions apply be informed in writing by the official in charge prior to his or her discharge from a state prison or other state penal institution or agency of the right to petition for a certificate of rehabilitation and pardon.

This bill would extend the right to petition for a certificate of rehabilitation and pardon to persons convicted of a felony who were committed to a county jail. The bill provides that the period of rehabilitation in that case commences upon discharge from custody or release on postrelease community supervision or mandatory supervision, whichever is sooner. The bill would require that any person to whom these provisions apply be informed in writing by the official in charge prior to his or her discharge from a county jail of the right to petition for a certificate of rehabilitation and pardon. The bill would make additional nonsubstantive changes and conforming changes, and would delete obsolete provisions. By increasing the duties of local officials, this bill would create a state-mandated local program.

(4) Existing law, subject to exceptions, prohibits a person committed to the custody of the Secretary of the Department of Corrections and Rehabilitation from being subject to prosecution for a nonfelony offense that is pending against him or her at the time of commitment arising out of, among other things, the operation of a motor vehicle. Existing law also prohibits the driver's license of that person from being suspended or revoked, or issuance or renewal therefor denied, as a result of a nonfelony offense pending against him or her at the time of

commitment that occurred prior to the time of commitment. Existing law excepts from those prohibitions an offense committed by a person while temporarily released from custody or on parole.

This bill would extend those provisions to persons committed to a county jail for conviction of a felony. The bill would except from those prohibitions an offense committed by a person while on postrelease community supervision.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 612 of the Statutes of 2014, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is

1 encouraged to give priority enrollment in programs to promote
2 successful return to the community to an inmate with a short
3 remaining term of commitment and a release date that would allow
4 him or her adequate time to complete the program.

5 (3) In any case in which the punishment prescribed by statute
6 for a person convicted of a public offense is a term of imprisonment
7 in the state prison *or a term pursuant to subdivision (h) of Section*
8 *1170* of any specification of three time periods, the court shall
9 sentence the defendant to one of the terms of imprisonment
10 specified unless the convicted person is given any other disposition
11 provided by law, including a fine, jail, probation, or the suspension
12 of imposition or execution of sentence or is sentenced pursuant to
13 subdivision (b) of Section 1168 because he or she had committed
14 his or her crime prior to July 1, 1977. In sentencing the convicted
15 person, the court shall apply the sentencing rules of the Judicial
16 Council. The court, unless it determines that there are
17 circumstances in mitigation of the punishment prescribed, shall
18 also impose any other term that it is required by law to impose as
19 an additional term. Nothing in this article shall affect any provision
20 of law that imposes the death penalty, that authorizes or restricts
21 the granting of probation or suspending the execution or imposition
22 of sentence, or expressly provides for imprisonment in the state
23 prison for life, except as provided in paragraph (2) of subdivision
24 (d). In any case in which the amount of preimprisonment credit
25 under Section 2900.5 or any other ~~provision of law~~ is equal to or
26 exceeds any sentence imposed pursuant to this chapter, *except for*
27 *the remaining portion of mandatory supervision pursuant to*
28 *subparagraph (B) of paragraph (5) of subdivision (h)*, the entire
29 sentence shall be deemed to have been served, *except for the*
30 *remaining period of mandatory supervision*, and the defendant
31 shall not be actually delivered to the custody of the secretary *or*
32 *to the custody of the county correctional administrator*. The court
33 shall advise the defendant that he or she shall serve ~~a~~ *an applicable*
34 *period of parole, postrelease community supervision, or mandatory*
35 *supervision*, and order the defendant to report to the parole *or*
36 *probation* office closest to the defendant's last legal residence,
37 unless the in-custody credits equal the total sentence, including
38 both confinement time and the period of parole, *postrelease*
39 *community supervision, or mandatory supervision*. The sentence
40 shall be deemed a separate prior prison term ~~under~~ *or a sentence*

1 *of imprisonment in a county jail under subdivision (h) for purposes*
2 *of Section 667.5, and a copy of the judgment and other necessary*
3 *documentation shall be forwarded to the secretary.*

4 (b) When a judgment of imprisonment is to be imposed and the
5 statute specifies three possible terms, the choice of the appropriate
6 term shall rest within the sound discretion of the court. At least
7 four days prior to the time set for imposition of judgment, either
8 party or the victim, or the family of the victim if the victim is
9 deceased, may submit a statement in aggravation or mitigation. In
10 determining the appropriate term, the court may consider the record
11 in the case, the probation officer's report, other reports, including
12 reports received pursuant to Section 1203.03, and statements in
13 aggravation or mitigation submitted by the prosecution, the
14 defendant, or the victim, or the family of the victim if the victim
15 is deceased, and any further evidence introduced at the sentencing
16 hearing. The court shall select the term which, in the court's
17 discretion, best serves the interests of justice. The court shall set
18 forth on the record the reasons for imposing the term selected and
19 the court may not impose an upper term by using the fact of any
20 enhancement upon which sentence is imposed under any provision
21 of law. A term of imprisonment shall not be specified if imposition
22 of sentence is suspended.

23 (c) The court shall state the reasons for its sentence choice on
24 the record at the time of sentencing. The court shall also inform
25 the defendant that as part of the sentence after expiration of the
26 term he or she may be on parole for a period as provided in Section
27 3000 *or 3000.08 or postrelease community supervision for a period*
28 *as provided in Section 3451.*

29 (d) (1) When a defendant subject to this section or subdivision
30 (b) of Section 1168 has been sentenced to be imprisoned in the
31 state prison *or county jail pursuant to subdivision (h)* and has been
32 committed to the custody of the secretary *or the county correctional*
33 *administrator*, the court may, within 120 days of the date of
34 commitment on its own motion, or at any time upon the
35 recommendation of the secretary or the Board of Parole Hearings
36 *in the case of state prison inmates, or the county correctional*
37 *administrator in the case of county jail inmates*, recall the sentence
38 and commitment previously ordered and resentence the defendant
39 in the same manner as if he or she had not previously been
40 sentenced, provided the new sentence, if any, is no greater than

1 the initial sentence. The court resentencing under this subdivision
2 shall apply the sentencing rules of the Judicial Council so as to
3 eliminate disparity of sentences and to promote uniformity of
4 sentencing. Credit shall be given for time served.

5 (2) (A) (i) When a defendant who was under 18 years of age
6 at the time of the commission of the offense for which the
7 defendant was sentenced to imprisonment for life without the
8 possibility of parole has served at least 15 years of that sentence,
9 the defendant may submit to the sentencing court a petition for
10 recall and resentencing.

11 (ii) Notwithstanding clause (i), this paragraph shall not apply
12 to defendants sentenced to life without parole for an offense where
13 the defendant tortured, as described in Section 206, his or her
14 victim or the victim was a public safety official, including any law
15 enforcement personnel mentioned in Chapter 4.5 (commencing
16 with Section 830) of Title 3, or any firefighter as described in
17 Section 245.1, as well as any other officer in any segment of law
18 enforcement who is employed by the federal government, the state,
19 or any of its political subdivisions.

20 (B) The defendant shall file the original petition with the
21 sentencing court. A copy of the petition shall be served on the
22 agency that prosecuted the case. The petition shall include the
23 defendant's statement that he or she was under 18 years of age at
24 the time of the crime and was sentenced to life in prison without
25 the possibility of parole, the defendant's statement describing his
26 or her remorse and work towards rehabilitation, and the defendant's
27 statement that one of the following is true:

28 (i) The defendant was convicted pursuant to felony murder or
29 aiding and abetting murder provisions of law.

30 (ii) The defendant does not have juvenile felony adjudications
31 for assault or other felony crimes with a significant potential for
32 personal harm to victims prior to the offense for which the sentence
33 is being considered for recall.

34 (iii) The defendant committed the offense with at least one adult
35 codefendant.

36 (iv) The defendant has performed acts that tend to indicate
37 rehabilitation or the potential for rehabilitation, including, but not
38 limited to, availing himself or herself of rehabilitative, educational,
39 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

3 (C) If any of the information required in subparagraph (B) is
4 missing from the petition, or if proof of service on the prosecuting
5 agency is not provided, the court shall return the petition to the
6 defendant and advise the defendant that the matter cannot be
7 considered without the missing information.

8 (D) A reply to the petition, if any, shall be filed with the court
9 within 60 days of the date on which the prosecuting agency was
10 served with the petition, unless a continuance is granted for good
11 cause.

12 (E) If the court finds by a preponderance of the evidence that
13 the statements in the petition are true, the court shall hold a hearing
14 to consider whether to recall the sentence and commitment
15 previously ordered and to resentence the defendant in the same
16 manner as if the defendant had not previously been sentenced,
17 provided that the new sentence, if any, is not greater than the initial
18 sentence. Victims, or victim family members if the victim is
19 deceased, shall retain the rights to participate in the hearing.

20 (F) The factors that the court may consider when determining
21 whether to recall and resentence include, but are not limited to,
22 the following:

23 (i) The defendant was convicted pursuant to felony murder or
24 aiding and abetting murder provisions of law.

25 (ii) The defendant does not have juvenile felony adjudications
26 for assault or other felony crimes with a significant potential for
27 personal harm to victims prior to the offense for which the sentence
28 is being considered for recall.

29 (iii) The defendant committed the offense with at least one adult
30 codefendant.

31 (iv) Prior to the offense for which the sentence is being
32 considered for recall, the defendant had insufficient adult support
33 or supervision and had suffered from psychological or physical
34 trauma, or significant stress.

35 (v) The defendant suffers from cognitive limitations due to
36 mental illness, developmental disabilities, or other factors that did
37 not constitute a defense, but influenced the defendant's
38 involvement in the offense.

39 (vi) The defendant has performed acts that tend to indicate
40 rehabilitation or the potential for rehabilitation, including, but not

1 limited to, availing himself or herself of rehabilitative, educational,
2 or vocational programs, if those programs have been available at
3 his or her classification level and facility, using self-study for
4 self-improvement, or showing evidence of remorse.

5 (vii) The defendant has maintained family ties or connections
6 with others through letter writing, calls, or visits, or has eliminated
7 contact with individuals outside of prison who are currently
8 involved with crime.

9 (viii) The defendant has had no disciplinary actions for violent
10 activities in the last five years in which the defendant was
11 determined to be the aggressor.

12 (G) The court shall have the discretion to recall the sentence
13 and commitment previously ordered and to resentence the
14 defendant in the same manner as if the defendant had not
15 previously been sentenced, provided that the new sentence, if any,
16 is not greater than the initial sentence. The discretion of the court
17 shall be exercised in consideration of the criteria in subparagraph
18 (B). Victims, or victim family members if the victim is deceased,
19 shall be notified of the resentencing hearing and shall retain their
20 rights to participate in the hearing.

21 (H) If the sentence is not recalled, the defendant may submit
22 another petition for recall and resentencing to the sentencing court
23 when the defendant has been committed to the custody of the
24 department for at least 20 years. If recall and resentencing is not
25 granted under that petition, the defendant may file another petition
26 after having served 24 years. The final petition may be submitted,
27 and the response to that petition shall be determined, during the
28 25th year of the defendant's sentence.

29 (I) In addition to the criteria in subparagraph (F), the court may
30 consider any other criteria that the court deems relevant to its
31 decision, so long as the court identifies them on the record,
32 provides a statement of reasons for adopting them, and states why
33 the defendant does or does not satisfy the criteria.

34 (J) This subdivision shall have retroactive application.

35 (e) (1) Notwithstanding any other law and consistent with
36 paragraph (1) of subdivision (a), if the secretary or the Board of
37 Parole Hearings or both determine that a prisoner satisfies the
38 criteria set forth in paragraph (2), the secretary or the board may
39 recommend to the court that the prisoner's sentence be recalled.

1 (2) The court shall have the discretion to resentence or recall if
2 the court finds that the facts described in subparagraphs (A) and
3 (B) or subparagraphs (B) and (C) exist:

4 (A) The prisoner is terminally ill with an incurable condition
5 caused by an illness or disease that would produce death within
6 six months, as determined by a physician employed by the
7 department.

8 (B) The conditions under which the prisoner would be released
9 or receive treatment do not pose a threat to public safety.

10 (C) The prisoner is permanently medically incapacitated with
11 a medical condition that renders him or her permanently unable
12 to perform activities of basic daily living, and results in the prisoner
13 requiring 24-hour total care, including, but not limited to, coma,
14 persistent vegetative state, brain death, ventilator-dependency, loss
15 of control of muscular or neurological function, and that
16 incapacitation did not exist at the time of the original sentencing.

17 The Board of Parole Hearings shall make findings pursuant to
18 this subdivision before making a recommendation for resentence
19 or recall to the court. This subdivision does not apply to a prisoner
20 sentenced to death or a term of life without the possibility of parole.

21 (3) Within 10 days of receipt of a positive recommendation by
22 the secretary or the board, the court shall hold a hearing to consider
23 whether the prisoner's sentence should be recalled.

24 (4) Any physician employed by the department who determines
25 that a prisoner has six months or less to live shall notify the chief
26 medical officer of the prognosis. If the chief medical officer
27 concurs with the prognosis, he or she shall notify the warden.
28 Within 48 hours of receiving notification, the warden or the
29 warden's representative shall notify the prisoner of the recall and
30 resentencing procedures, and shall arrange for the prisoner to
31 designate a family member or other outside agent to be notified
32 as to the prisoner's medical condition and prognosis, and as to the
33 recall and resentencing procedures. If the inmate is deemed
34 mentally unfit, the warden or the warden's representative shall
35 contact the inmate's emergency contact and provide the information
36 described in paragraph (2).

37 (5) The warden or the warden's representative shall provide the
38 prisoner and his or her family member, agent, or emergency
39 contact, as described in paragraph (4), updated information
40 throughout the recall and resentencing process with regard to the

1 prisoner's medical condition and the status of the prisoner's recall
2 and resentencing proceedings.

3 (6) Notwithstanding any other provisions of this section, the
4 prisoner or his or her family member or designee may
5 independently request consideration for recall and resentencing
6 by contacting the chief medical officer at the prison or the
7 secretary. Upon receipt of the request, the chief medical officer
8 and the warden or the warden's representative shall follow the
9 procedures described in paragraph (4). If the secretary determines
10 that the prisoner satisfies the criteria set forth in paragraph (2), the
11 secretary or board may recommend to the court that the prisoner's
12 sentence be recalled. The secretary shall submit a recommendation
13 for release within 30 days in the case of inmates sentenced to
14 determinate terms and, in the case of inmates sentenced to
15 indeterminate terms, the secretary shall make a recommendation
16 to the Board of Parole Hearings with respect to the inmates who
17 have applied under this section. The board shall consider this
18 information and make an independent judgment pursuant to
19 paragraph (2) and make findings related thereto before rejecting
20 the request or making a recommendation to the court. This action
21 shall be taken at the next lawfully noticed board meeting.

22 (7) Any recommendation for recall submitted to the court by
23 the secretary or the Board of Parole Hearings shall include one or
24 more medical evaluations, a postrelease plan, and findings pursuant
25 to paragraph (2).

26 (8) If possible, the matter shall be heard before the same judge
27 of the court who sentenced the prisoner.

28 (9) If the court grants the recall and resentencing application,
29 the prisoner shall be released by the department within 48 hours
30 of receipt of the court's order, unless a longer time period is agreed
31 to by the inmate. At the time of release, the warden or the warden's
32 representative shall ensure that the prisoner has each of the
33 following in his or her possession: a discharge medical summary,
34 full medical records, state identification, parole *or postrelease*
35 *community supervision* medications, and all property belonging
36 to the prisoner. After discharge, any additional records shall be
37 sent to the prisoner's forwarding address.

38 (10) The secretary shall issue a directive to medical and
39 correctional staff employed by the department that details the
40 guidelines and procedures for initiating a recall and resentencing

1 procedure. The directive shall clearly state that any prisoner who
2 is given a prognosis of six months or less to live is eligible for
3 recall and resentencing consideration, and that recall and
4 resentencing procedures shall be initiated upon that prognosis.

5 *(11) The provisions of this subdivision shall be available to an*
6 *inmate who is sentenced to a county jail pursuant to subdivision*
7 *(h). For purposes of those inmates, “secretary” or “warden” shall*
8 *mean the county correctional administrator and “chief medical*
9 *officer” shall mean a physician designated by the county*
10 *correctional administrator for this purpose.*

11 (f) Notwithstanding any other provision of this section, for
12 purposes of paragraph (3) of subdivision (h), any allegation that
13 a defendant is eligible for state prison due to a prior or current
14 conviction, sentence enhancement, or because he or she is required
15 to register as a sex offender shall not be subject to dismissal
16 pursuant to Section 1385.

17 (g) A sentence to state prison for a determinate term for which
18 only one term is specified, is a sentence to state prison under this
19 section.

20 (h) (1) Except as provided in paragraph (3), a felony punishable
21 pursuant to this subdivision where the term is not specified in the
22 underlying offense shall be punishable by a term of imprisonment
23 in a county jail for 16 months, or two or three years.

24 (2) Except as provided in paragraph (3), a felony punishable
25 pursuant to this subdivision shall be punishable by imprisonment
26 in a county jail for the term described in the underlying offense.

27 (3) Notwithstanding paragraphs (1) and (2), where the defendant
28 (A) has a prior or current felony conviction for a serious felony
29 described in subdivision (c) of Section 1192.7 or a prior or current
30 conviction for a violent felony described in subdivision (c) of
31 Section 667.5, (B) has a prior felony conviction in another
32 jurisdiction for an offense that has all the elements of a serious
33 felony described in subdivision (c) of Section 1192.7 or a violent
34 felony described in subdivision (c) of Section 667.5, (C) is required
35 to register as a sex offender pursuant to Chapter 5.5 (commencing
36 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
37 and as part of the sentence an enhancement pursuant to Section
38 186.11 is imposed, an executed sentence for a felony punishable
39 pursuant to this subdivision shall be served in state prison.

1 (4) Nothing in this subdivision shall be construed to prevent
2 other dispositions authorized by law, including pretrial diversion,
3 deferred entry of judgment, or an order granting probation pursuant
4 to Section 1203.1.

5 (5) (A) Unless the court finds that, in the interests of justice, it
6 is not appropriate in a particular case, the court, when imposing a
7 sentence pursuant to paragraph (1) or (2), shall suspend execution
8 of a concluding portion of the term for a period selected at the
9 court's discretion.

10 (B) The portion of a defendant's sentenced term that is
11 suspended pursuant to this paragraph shall be known as mandatory
12 supervision, and, unless otherwise ordered by the court, shall
13 commence upon release from physical custody or an alternative
14 custody program, whichever is later. During the period of
15 mandatory supervision, the defendant shall be supervised by the
16 county probation officer in accordance with the terms, conditions,
17 and procedures generally applicable to persons placed on probation,
18 for the remaining unserved portion of the sentence imposed by the
19 court. The period of supervision shall be mandatory, and may not
20 be earlier terminated except by court order. Any proceeding to
21 revoke or modify mandatory supervision under this subparagraph
22 shall be conducted pursuant to either subdivisions (a) and (b) of
23 Section 1203.2 or Section 1203.3. During the period when the
24 defendant is under ~~such~~ *that* supervision, unless in actual custody
25 related to the sentence imposed by the court, the defendant shall
26 be entitled to only actual time credit against the term of
27 imprisonment imposed by the court. Any time period which is
28 suspended because a person has absconded shall not be credited
29 toward the period of supervision.

30 (6) The sentencing changes made by the act that added this
31 subdivision shall be applied prospectively to any person sentenced
32 on or after October 1, 2011.

33 (7) The sentencing changes made to paragraph (5) by the act
34 that added this paragraph shall become effective and operative on
35 January 1, 2015, and shall be applied prospectively to any person
36 sentenced on or after January 1, 2015.

37 (i) This section shall remain in effect only until January 1, 2017,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before that date, deletes or extends that date.

SEC. 2. Section 1170 of the Penal Code, as amended by Section 2 of Chapter 612 of the Statutes of 2014, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, *or a term pursuant to subdivision (h)*, of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts

1 the granting of probation or suspending the execution or imposition
2 of sentence, or expressly provides for imprisonment in the state
3 prison for life, except as provided in paragraph (2) of subdivision
4 (d). In any case in which the amount of preimprisonment credit
5 under Section 2900.5 or any other provision of law is equal to or
6 exceeds any sentence imposed pursuant to this chapter, *except for*
7 *a remaining portion of mandatory supervision imposed pursuant*
8 *to subparagraph (B) of paragraph (5) of subdivision (h)*, the entire
9 sentence shall be deemed to have been served, *except for the*
10 *remaining period of mandatory supervision*, and the defendant
11 shall not be actually delivered to the custody of the secretary *or*
12 *the county correctional administrator*. The court shall advise the
13 defendant that he or she shall serve—~~a~~ *an applicable* period of
14 parole, *postrelease community supervision, or mandatory*
15 *supervision* and order the defendant to report to the parole *or*
16 *probation* office closest to the defendant's last legal residence,
17 unless the in-custody credits equal the total sentence, including
18 both confinement time and the period of parole, *postrelease*
19 *community supervision, or mandatory supervision*. The sentence
20 shall be deemed a separate prior prison term—~~under~~ *or a sentence*
21 *of imprisonment in a county jail under subdivision (h) for purposes*
22 *of Section 667.5*, and a copy of the judgment and other necessary
23 documentation shall be forwarded to the secretary.

24 (b) When a judgment of imprisonment is to be imposed and the
25 statute specifies three possible terms, the court shall order
26 imposition of the middle term, unless there are circumstances in
27 aggravation or mitigation of the crime. At least four days prior to
28 the time set for imposition of judgment, either party or the victim,
29 or the family of the victim if the victim is deceased, may submit
30 a statement in aggravation or mitigation to dispute facts in the
31 record or the probation officer's report, or to present additional
32 facts. In determining whether there are circumstances that justify
33 imposition of the upper or lower term, the court may consider the
34 record in the case, the probation officer's report, other reports,
35 including reports received pursuant to Section 1203.03, and
36 statements in aggravation or mitigation submitted by the
37 prosecution, the defendant, or the victim, or the family of the victim
38 if the victim is deceased, and any further evidence introduced at
39 the sentencing hearing. The court shall set forth on the record the
40 facts and reasons for imposing the upper or lower term. The court

1 may not impose an upper term by using the fact of any
2 enhancement upon which sentence is imposed under any provision
3 of law. A term of imprisonment shall not be specified if imposition
4 of sentence is suspended.

5 (c) The court shall state the reasons for its sentence choice on
6 the record at the time of sentencing. The court shall also inform
7 the defendant that as part of the sentence after expiration of the
8 term he or she may be on parole for a period as provided in Section
9 3000 *or 3000.08 or postrelease community supervision for a period*
10 *as provided in Section 3451.*

11 (d) (1) When a defendant subject to this section or subdivision
12 (b) of Section 1168 has been sentenced to be imprisoned in the
13 state prison *or county jail pursuant to subdivision (h)* and has been
14 committed to the custody of the secretary *or the county correctional*
15 *administrator*, the court may, within 120 days of the date of
16 commitment on its own motion, or at any time upon the
17 recommendation of the secretary or the Board of Parole Hearings
18 *in the case of state prison inmates, or the county correctional*
19 *administrator in the case of county jail inmates*, recall the sentence
20 and commitment previously ordered and resentence the defendant
21 in the same manner as if he or she had not previously been
22 sentenced, provided the new sentence, if any, is no greater than
23 the initial sentence. The court resentencing under this subdivision
24 shall apply the sentencing rules of the Judicial Council so as to
25 eliminate disparity of sentences and to promote uniformity of
26 sentencing. Credit shall be given for time served.

27 (2) (A) (i) When a defendant who was under 18 years of age
28 at the time of the commission of the offense for which the
29 defendant was sentenced to imprisonment for life without the
30 possibility of parole has served at least 15 years of that sentence,
31 the defendant may submit to the sentencing court a petition for
32 recall and resentencing.

33 (ii) Notwithstanding clause (i), this paragraph shall not apply
34 to defendants sentenced to life without parole for an offense where
35 the defendant tortured, as described in Section 206, his or her
36 victim or the victim was a public safety official, including any law
37 enforcement personnel mentioned in Chapter 4.5 (commencing
38 with Section 830) of Title 3, or any firefighter as described in
39 Section 245.1, as well as any other officer in any segment of law

1 enforcement who is employed by the federal government, the state,
2 or any of its political subdivisions.

3 (B) The defendant shall file the original petition with the
4 sentencing court. A copy of the petition shall be served on the
5 agency that prosecuted the case. The petition shall include the
6 defendant's statement that he or she was under 18 years of age at
7 the time of the crime and was sentenced to life in prison without
8 the possibility of parole, the defendant's statement describing his
9 or her remorse and work towards rehabilitation, and the defendant's
10 statement that one of the following is true:

11 (i) The defendant was convicted pursuant to felony murder or
12 aiding and abetting murder provisions of law.

13 (ii) The defendant does not have juvenile felony adjudications
14 for assault or other felony crimes with a significant potential for
15 personal harm to victims prior to the offense for which the sentence
16 is being considered for recall.

17 (iii) The defendant committed the offense with at least one adult
18 codefendant.

19 (iv) The defendant has performed acts that tend to indicate
20 rehabilitation or the potential for rehabilitation, including, but not
21 limited to, availing himself or herself of rehabilitative, educational,
22 or vocational programs, if those programs have been available at
23 his or her classification level and facility, using self-study for
24 self-improvement, or showing evidence of remorse.

25 (C) If any of the information required in subparagraph (B) is
26 missing from the petition, or if proof of service on the prosecuting
27 agency is not provided, the court shall return the petition to the
28 defendant and advise the defendant that the matter cannot be
29 considered without the missing information.

30 (D) A reply to the petition, if any, shall be filed with the court
31 within 60 days of the date on which the prosecuting agency was
32 served with the petition, unless a continuance is granted for good
33 cause.

34 (E) If the court finds by a preponderance of the evidence that
35 the statements in the petition are true, the court shall hold a hearing
36 to consider whether to recall the sentence and commitment
37 previously ordered and to resentence the defendant in the same
38 manner as if the defendant had not previously been sentenced,
39 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is
2 deceased, shall retain the rights to participate in the hearing.

3 (F) The factors that the court may consider when determining
4 whether to recall and resentence include, but are not limited to,
5 the following:

6 (i) The defendant was convicted pursuant to felony murder or
7 aiding and abetting murder provisions of law.

8 (ii) The defendant does not have juvenile felony adjudications
9 for assault or other felony crimes with a significant potential for
10 personal harm to victims prior to the offense for which the sentence
11 is being considered for recall.

12 (iii) The defendant committed the offense with at least one adult
13 codefendant.

14 (iv) Prior to the offense for which the sentence is being
15 considered for recall, the defendant had insufficient adult support
16 or supervision and had suffered from psychological or physical
17 trauma, or significant stress.

18 (v) The defendant suffers from cognitive limitations due to
19 mental illness, developmental disabilities, or other factors that did
20 not constitute a defense, but influenced the defendant's
21 involvement in the offense.

22 (vi) The defendant has performed acts that tend to indicate
23 rehabilitation or the potential for rehabilitation, including, but not
24 limited to, availing himself or herself of rehabilitative, educational,
25 or vocational programs, if those programs have been available at
26 his or her classification level and facility, using self-study for
27 self-improvement, or showing evidence of remorse.

28 (vii) The defendant has maintained family ties or connections
29 with others through letter writing, calls, or visits, or has eliminated
30 contact with individuals outside of prison who are currently
31 involved with crime.

32 (viii) The defendant has had no disciplinary actions for violent
33 activities in the last five years in which the defendant was
34 determined to be the aggressor.

35 (G) The court shall have the discretion to recall the sentence
36 and commitment previously ordered and to resentence the
37 defendant in the same manner as if the defendant had not
38 previously been sentenced, provided that the new sentence, if any,
39 is not greater than the initial sentence. The discretion of the court
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,
2 shall be notified of the resentencing hearing and shall retain their
3 rights to participate in the hearing.

4 (H) If the sentence is not recalled, the defendant may submit
5 another petition for recall and resentencing to the sentencing court
6 when the defendant has been committed to the custody of the
7 department for at least 20 years. If recall and resentencing is not
8 granted under that petition, the defendant may file another petition
9 after having served 24 years. The final petition may be submitted,
10 and the response to that petition shall be determined, during the
11 25th year of the defendant's sentence.

12 (I) In addition to the criteria in subparagraph (F), the court may
13 consider any other criteria that the court deems relevant to its
14 decision, so long as the court identifies them on the record,
15 provides a statement of reasons for adopting them, and states why
16 the defendant does or does not satisfy the criteria.

17 (J) This subdivision shall have retroactive application.

18 (e) (1) Notwithstanding any other law and consistent with
19 paragraph (1) of subdivision (a), if the secretary or the Board of
20 Parole Hearings or both determine that a prisoner satisfies the
21 criteria set forth in paragraph (2), the secretary or the board may
22 recommend to the court that the prisoner's sentence be recalled.

23 (2) The court shall have the discretion to resentence or recall if
24 the court finds that the facts described in subparagraphs (A) and
25 (B) or subparagraphs (B) and (C) exist:

26 (A) The prisoner is terminally ill with an incurable condition
27 caused by an illness or disease that would produce death within
28 six months, as determined by a physician employed by the
29 department.

30 (B) The conditions under which the prisoner would be released
31 or receive treatment do not pose a threat to public safety.

32 (C) The prisoner is permanently medically incapacitated with
33 a medical condition that renders him or her permanently unable
34 to perform activities of basic daily living, and results in the prisoner
35 requiring 24-hour total care, including, but not limited to, coma,
36 persistent vegetative state, brain death, ventilator-dependency, loss
37 of control of muscular or neurological function, and that
38 incapacitation did not exist at the time of the original sentencing.

39 The Board of Parole Hearings shall make findings pursuant to
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner
2 sentenced to death or a term of life without the possibility of parole.

3 (3) Within 10 days of receipt of a positive recommendation by
4 the secretary or the board, the court shall hold a hearing to consider
5 whether the prisoner's sentence should be recalled.

6 (4) Any physician employed by the department who determines
7 that a prisoner has six months or less to live shall notify the chief
8 medical officer of the prognosis. If the chief medical officer
9 concurs with the prognosis, he or she shall notify the warden.
10 Within 48 hours of receiving notification, the warden or the
11 warden's representative shall notify the prisoner of the recall and
12 resentencing procedures, and shall arrange for the prisoner to
13 designate a family member or other outside agent to be notified
14 as to the prisoner's medical condition and prognosis, and as to the
15 recall and resentencing procedures. If the inmate is deemed
16 mentally unfit, the warden or the warden's representative shall
17 contact the inmate's emergency contact and provide the information
18 described in paragraph (2).

19 (5) The warden or the warden's representative shall provide the
20 prisoner and his or her family member, agent, or emergency
21 contact, as described in paragraph (4), updated information
22 throughout the recall and resentencing process with regard to the
23 prisoner's medical condition and the status of the prisoner's recall
24 and resentencing proceedings.

25 (6) Notwithstanding any other provisions of this section, the
26 prisoner or his or her family member or designee may
27 independently request consideration for recall and resentencing
28 by contacting the chief medical officer at the prison or the
29 secretary. Upon receipt of the request, the chief medical officer
30 and the warden or the warden's representative shall follow the
31 procedures described in paragraph (4). If the secretary determines
32 that the prisoner satisfies the criteria set forth in paragraph (2), the
33 secretary or board may recommend to the court that the prisoner's
34 sentence be recalled. The secretary shall submit a recommendation
35 for release within 30 days in the case of inmates sentenced to
36 determinate terms and, in the case of inmates sentenced to
37 indeterminate terms, the secretary shall make a recommendation
38 to the Board of Parole Hearings with respect to the inmates who
39 have applied under this section. The board shall consider this
40 information and make an independent judgment pursuant to

1 paragraph (2) and make findings related thereto before rejecting
2 the request or making a recommendation to the court. This action
3 shall be taken at the next lawfully noticed board meeting.

4 (7) Any recommendation for recall submitted to the court by
5 the secretary or the Board of Parole Hearings shall include one or
6 more medical evaluations, a postrelease plan, and findings pursuant
7 to paragraph (2).

8 (8) If possible, the matter shall be heard before the same judge
9 of the court who sentenced the prisoner.

10 (9) If the court grants the recall and resentencing application,
11 the prisoner shall be released by the department within 48 hours
12 of receipt of the court's order, unless a longer time period is agreed
13 to by the inmate. At the time of release, the warden or the warden's
14 representative shall ensure that the prisoner has each of the
15 following in his or her possession: a discharge medical summary,
16 full medical records, state identification, parole *or postrelease*
17 *community supervision* medications, and all property belonging
18 to the prisoner. After discharge, any additional records shall be
19 sent to the prisoner's forwarding address.

20 (10) The secretary shall issue a directive to medical and
21 correctional staff employed by the department that details the
22 guidelines and procedures for initiating a recall and resentencing
23 procedure. The directive shall clearly state that any prisoner who
24 is given a prognosis of six months or less to live is eligible for
25 recall and resentencing consideration, and that recall and
26 resentencing procedures shall be initiated upon that prognosis.

27 *(11) The provisions of this subdivision shall be available to an*
28 *inmate who is sentenced to a county jail pursuant to subdivision*
29 *(h). For purposes of those inmates, "secretary" or "warden" shall*
30 *mean the county correctional administrator and "chief medical*
31 *officer" shall mean a physician designated by the county*
32 *correctional administrator for this purpose.*

33 (f) Notwithstanding any other provision of this section, for
34 purposes of paragraph (3) of subdivision (h), any allegation that
35 a defendant is eligible for state prison due to a prior or current
36 conviction, sentence enhancement, or because he or she is required
37 to register as a sex offender shall not be subject to dismissal
38 pursuant to Section 1385.

1 (g) A sentence to state prison for a determinate term for which
2 only one term is specified, is a sentence to state prison under this
3 section.

4 (h) (1) Except as provided in paragraph (3), a felony punishable
5 pursuant to this subdivision where the term is not specified in the
6 underlying offense shall be punishable by a term of imprisonment
7 in a county jail for 16 months, or two or three years.

8 (2) Except as provided in paragraph (3), a felony punishable
9 pursuant to this subdivision shall be punishable by imprisonment
10 in a county jail for the term described in the underlying offense.

11 (3) Notwithstanding paragraphs (1) and (2), where the defendant
12 (A) has a prior or current felony conviction for a serious felony
13 described in subdivision (c) of Section 1192.7 or a prior or current
14 conviction for a violent felony described in subdivision (c) of
15 Section 667.5, (B) has a prior felony conviction in another
16 jurisdiction for an offense that has all the elements of a serious
17 felony described in subdivision (c) of Section 1192.7 or a violent
18 felony described in subdivision (c) of Section 667.5, (C) is required
19 to register as a sex offender pursuant to Chapter 5.5 (commencing
20 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
21 and as part of the sentence an enhancement pursuant to Section
22 186.11 is imposed, an executed sentence for a felony punishable
23 pursuant to this subdivision shall be served in state prison.

24 (4) Nothing in this subdivision shall be construed to prevent
25 other dispositions authorized by law, including pretrial diversion,
26 deferred entry of judgment, or an order granting probation pursuant
27 to Section 1203.1.

28 (5) (A) Unless the court finds, in the interest of justice, that it
29 is not appropriate in a particular case, the court, when imposing a
30 sentence pursuant to paragraph (1) or (2), shall suspend execution
31 of a concluding portion of the term for a period selected at the
32 court's discretion.

33 (B) The portion of a defendant's sentenced term that is
34 suspended pursuant to this paragraph shall be known as mandatory
35 supervision, and, unless otherwise ordered by the court, shall
36 commence upon release from physical custody or an alternative
37 custody program, whichever is later. During the period of
38 mandatory supervision, the defendant shall be supervised by the
39 county probation officer in accordance with the terms, conditions,
40 and procedures generally applicable to persons placed on probation,

1 for the remaining unserved portion of the sentence imposed by the
2 court. The period of supervision shall be mandatory, and may not
3 be earlier terminated except by court order. Any proceeding to
4 revoke or modify mandatory supervision under this subparagraph
5 shall be conducted pursuant to either subdivisions (a) and (b) of
6 Section 1203.2 or Section 1203.3. During the period when the
7 defendant is under ~~such~~ *that* supervision, unless in actual custody
8 related to the sentence imposed by the court, the defendant shall
9 be entitled to only actual time credit against the term of
10 imprisonment imposed by the court. Any time period which is
11 suspended because a person has absconded shall not be credited
12 toward the period of supervision.

13 (6) The sentencing changes made by the act that added this
14 subdivision shall be applied prospectively to any person sentenced
15 on or after October 1, 2011.

16 (7) The sentencing changes made to paragraph (5) by the act
17 that added this paragraph shall become effective and operative on
18 January 1, 2015, and shall be applied prospectively to any person
19 sentenced on or after January 1, 2015.

20 (i) This section shall become operative on January 1, 2017.

21 SEC. 3. Section 1170.3 of the Penal Code, as amended by
22 Section 19 of Chapter 26 of the Statutes of 2014, is amended to
23 read:

24 1170.3. The Judicial Council shall seek to promote uniformity
25 in sentencing under Section 1170 by:

26 (a) The adoption of rules providing criteria for the consideration
27 of the trial judge at the time of sentencing regarding the court's
28 decision to:

29 (1) Grant or deny probation.

30 (2) Impose the lower, middle, or upper prison term.

31 (3) *Impose the lower, middle, or upper term pursuant to*
32 *paragraph (1) or (2) of subdivision (h) of Section 1170.*

33 ~~(3)~~

34 (4) Impose concurrent or consecutive sentences.

35 ~~(4)~~

36 (5) Determine whether or not to impose an enhancement where
37 that determination is permitted by law.

38 ~~(5)~~

39 (6) Deny a period of mandatory supervision in the interests of
40 justice under paragraph (5) of subdivision (h) of Section 1170 or

1 determine the appropriate period and conditions of mandatory
2 supervision. The rules implementing this paragraph shall be
3 adopted no later than January 1, 2015.

4 *(7) Determine the county or jurisdictional territory of*
5 *incarceration when the court is imposing a sentence pursuant to*
6 *subdivision (h) of Section 1170 concurrent or consecutive to a*
7 *sentence previously imposed pursuant to subdivision (h) of Section*
8 *1170 in another county or jurisdictional territory.*

9 (b) The adoption of rules standardizing the minimum content
10 and the sequential presentation of material in probation officer
11 reports submitted to the court regarding probation and mandatory
12 supervision under paragraph (5) of subdivision (h) of Section 1170.

13 (c) This section shall remain in effect only until January 1, 2017,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2017, deletes or extends that date.

16 SEC. 4. Section 1170.3 of the Penal Code, as amended by
17 Section 20 of Chapter 26 of the Statutes of 2014, is amended to
18 read:

19 1170.3. The Judicial Council shall seek to promote uniformity
20 in sentencing under Section 1170 by:

21 (a) The adoption of rules providing criteria for the consideration
22 of the trial judge at the time of sentencing regarding the court's
23 decision to:

24 (1) Grant or deny probation.

25 (2) Impose the lower or upper prison term.

26 *(3) Impose the lower or upper term pursuant to paragraph (1)*
27 *or (2) of subdivision (h) of Section 1170.*

28 ~~(3)~~

29 (4) Impose concurrent or consecutive sentences.

30 ~~(4)~~

31 (5) Determine whether or not to impose an enhancement where
32 that determination is permitted by law.

33 ~~(5)~~

34 (6) Deny a period of mandatory supervision in the interests of
35 justice under paragraph (5) of subdivision (h) of Section 1170 or
36 determine the appropriate period and conditions of mandatory
37 supervision. The rules implementing this paragraph shall be
38 adopted no later than January 1, 2015.

39 *(7) Determine the county or jurisdictional territory of*
40 *incarceration when the court is imposing a sentence pursuant to*

1 *subdivision (h) of Section 1170 concurrent or consecutive to a*
2 *sentence previously imposed pursuant to subdivision (h) of Section*
3 *1170 in another county or jurisdictional territory.*

4 (b) The adoption of rules standardizing the minimum content
5 and the sequential presentation of material in probation officer
6 reports submitted to the court regarding probation and mandatory
7 supervision under paragraph (5) of subdivision (h) of Section 1170.

8 (c) This section shall become operative on January 1, 2017.

9 SEC. 5. Section 3451 of the Penal Code is amended to read:

10 3451. (a) Notwithstanding any other law and except for persons
11 serving a prison term for any crime described in subdivision (b),
12 all persons released from prison on and after October 1, 2011, or,
13 whose sentence has been deemed served pursuant to Section 2900.5
14 after serving a prison term for a felony shall, upon release from
15 prison and for a period not exceeding three years immediately
16 following release, be subject to community supervision provided
17 ~~by a county agency designated by each county's board of~~
18 ~~supervisors~~ *the probation department of the county to which the*
19 *person is being released* which is consistent with evidence-based
20 practices, including, but not limited to, supervision policies,
21 procedures, programs, and practices demonstrated by scientific
22 research to reduce recidivism among individuals under postrelease
23 supervision.

24 (b) This section shall not apply to any person released from
25 prison after having served a prison term for any of the following:

26 (1) A serious felony described in subdivision (c) of Section
27 1192.7.

28 (2) A violent felony described in subdivision (c) of Section
29 667.5.

30 (3) A crime for which the person was sentenced pursuant to
31 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
32 of subdivision (c) of Section 1170.12.

33 (4) Any crime for which the person is classified as a high risk
34 sex offender.

35 (5) Any crime for which the person is required, as a condition
36 of parole, to undergo treatment by the State Department of State
37 Hospitals pursuant to Section 2962.

38 (c) (1) Postrelease supervision under this title shall be
39 ~~implemented by a county agency~~ *the county probation department*

1 according to a postrelease strategy designated by each county's
2 board of supervisors.

3 (2) The Department of Corrections and Rehabilitation shall
4 inform every prisoner subject to the provisions of this title, upon
5 release from state prison, of the requirements of this title and of
6 his or her responsibility to report to the county ~~agency responsible~~
7 ~~for serving that inmate~~ *probation department*. The department *or*
8 *probation department* shall also inform persons serving a term of
9 parole *or postrelease community supervision* for a felony offense
10 who are subject to this section of the requirements of this title and
11 of his or her responsibility to report to the county ~~agency~~
12 ~~responsible for serving that parolee~~ *probation department*. Thirty
13 days prior to the release of any person subject to postrelease
14 supervision by a county, the department shall notify the county of
15 all information that would otherwise be required for parolees under
16 subdivision (e) of Section 3003.

17 (d) ~~Any~~ A person released to postrelease community supervision
18 pursuant to subdivision (a) shall, regardless of any subsequent
19 determination that the person should have been released to parole
20 pursuant to Section 3000.08, remain subject to subdivision (a) after
21 having served 60 days under supervision pursuant to subdivision
22 (a).

23 SEC. 6. Section 4852.01 of the Penal Code is amended to read:
24 4852.01. (a) ~~Any person convicted of a felony who has been~~
25 ~~released from a state prison or other state penal institution or~~
26 ~~agency in California, whether discharged on completion of the~~
27 ~~term for which he or she was sentenced or released on parole prior~~
28 ~~to May 13, 1943, who has not been incarcerated in a state prison~~
29 ~~or other state penal institution or agency since his or her release,~~
30 ~~and who presents satisfactory evidence of a three-year residencee~~
31 ~~in this state immediately prior to the filing of the petition for a~~
32 ~~certificate of rehabilitation and pardon provided for by this chapter,~~
33 ~~may file the petition pursuant to the provisions of this chapter.~~

34 (b) ~~Any~~ A person convicted of a felony who, on May 13, 1943,
35 was confined in a state prison or other institution or agency to
36 which he or she was committed and any person convicted of a
37 felony after that date who is committed to a state prison or other
38 institution or ~~agency~~ *agency, including commitment to a county*
39 *jail pursuant to subdivision (h) of Section 1170*, may file a petition

1 for a certificate of rehabilitation and pardon pursuant to the
2 provisions of this chapter.

3 ~~(e) Any~~

4 (b) A person convicted of a felony or ~~any~~ a person who is
5 convicted of a misdemeanor violation of any sex offense specified
6 in Section 290, the accusatory pleading of which has been
7 dismissed pursuant to Section 1203.4, may file a petition for
8 certificate of rehabilitation and pardon pursuant to the provisions
9 of this chapter if the petitioner has not been incarcerated in ~~any~~ a
10 prison, jail, detention facility, or other penal institution or agency
11 since the dismissal of the accusatory ~~pleading and~~ *pleading*, is not
12 on probation for the commission of any other felony, and the
13 petitioner presents satisfactory evidence of five ~~years~~ *years*'
14 residence in this state prior to the filing of the petition.

15 ~~(d)~~

16 (c) This chapter ~~shall~~ *does* not apply to persons serving a
17 mandatory life parole, persons committed under death sentences,
18 persons convicted of a violation of Section 269, subdivision (c) of
19 Section 286, Section 288, subdivision (c) of Section 288a, Section
20 288.5, Section 288.7, or subdivision (j) of Section 289, or persons
21 in military service.

22 ~~(e)~~

23 (d) Notwithstanding any other law, the Governor has the right
24 to pardon a person convicted of a violation of Section 269,
25 subdivision (c) of Section 286, Section 288, subdivision (c) of
26 Section 288a, Section 288.5, Section 288.7, or subdivision (j) of
27 Section 289, if there are extraordinary circumstances.

28 SEC. 7. Section 4852.03 of the Penal Code is amended to read:

29 4852.03. (a) The period of rehabilitation ~~shall begin to run~~
30 *commences* upon the discharge of the petitioner from custody due
31 to his or her completion of the term to which he or she was
32 sentenced or upon his or her release on parole, *postrelease*
33 *community supervision, mandatory supervision*, or probation,
34 whichever is sooner. For purposes of this chapter, the period of
35 rehabilitation shall constitute five years' residence in this state,
36 plus a period of time determined by the following rules:

37 (1) ~~To the five years there shall be added~~ *An additional* four
38 years in the case of ~~any~~ a person convicted of violating Section
39 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of

1 Section 1672 of the Military and Veterans Code, or of committing
2 any other offense which carries a life sentence.

3 ~~(2) To the five years there shall be added~~ *An additional* five
4 years in the case of ~~any~~ *a* person convicted of committing ~~any~~ *an*
5 offense or attempted offense for which sex offender registration
6 is required pursuant to Section 290, ~~except for convictions for~~
7 ~~violations that in the case of a person convicted of a violation of~~
8 subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3,
9 311.10, or 314. ~~For those convictions, two years shall be added to~~
10 ~~the five years imposed by this section. 314, an additional two~~
11 ~~years.~~

12 ~~(3) To the five years there shall be added~~ *An additional* two
13 years in the case of ~~any~~ *a* person convicted of committing ~~any~~ *an*
14 offense that is not listed in paragraph (1) or paragraph (2) and that
15 does not carry a life sentence.

16 (4) The trial court hearing the application for the certificate of
17 rehabilitation may, if the defendant was ordered to serve
18 consecutive sentences, order that ~~his or her~~ *the* statutory period of
19 rehabilitation be extended for an additional period of time which
20 when combined with the time already served will not exceed the
21 period prescribed by statute for the sum of the maximum penalties
22 for all the crimes.

23 ~~(5) Any person who was discharged after completion of his or~~
24 ~~her term or was released on parole before May 13, 1943, is not~~
25 ~~subject to the periods of rehabilitation set forth in these rules.~~

26 (b) Unless and until the period of rehabilitation, ~~as stipulated~~
27 ~~in this section, required by subdivision (a)~~ has passed, the petitioner
28 shall be ineligible to file his or her petition for a certificate of
29 rehabilitation with the court. ~~Any~~ A certificate of rehabilitation
30 that is issued and under which the petitioner has not fulfilled the
31 requirements of this chapter shall be void.

32 (c) A change of residence within this state does not interrupt
33 the period of rehabilitation prescribed by this section.

34 SEC. 8. Section 4852.04 of the Penal Code is amended to read:
35 4852.04. Each person who may initiate the proceedings
36 provided for in this chapter shall be entitled to receive counsel and
37 assistance from all rehabilitative agencies, including the adult
38 probation officer of the county and all state parole officers, and,
39 in the case of persons under ~~the age of 30 years, 30 years of age,~~

1 from the ~~Youth Authority~~. *Department of Corrections and*
2 *Rehabilitation, Division of Juvenile Facilities.*

3 SEC. 9. Section 4852.06 of the Penal Code is amended to read:

4 4852.06. ~~Except as provided in subdivision (a) of Section~~
5 ~~4852.01, after~~ *After* the expiration of the minimum period of
6 rehabilitation applicable to him or her ~~(and, in the case of persons~~
7 ~~released upon parole or probation, and after the termination of~~
8 ~~parole or probation), each~~ *parole, probation, postrelease*
9 *supervision, or mandatory supervision, a person who has complied*
10 *with the requirements of Section 4852.05 may file in the superior*
11 *court of the county in which he or she then resides a petition for*
12 *ascertainment and declaration of the fact of his or her rehabilitation*
13 *and of matters incident thereto, and for a certificate of rehabilitation*
14 *under this chapter.* ~~No petition shall~~ *A petition shall not* be filed
15 until and unless the petitioner has continuously resided in this state,
16 after leaving prison *or jail*, for a period of not less than five years
17 immediately preceding the date of filing the petition.

18 SEC. 10. Section 4852.1 of the Penal Code is amended to read:

19 4852.1. (a) The court in which the petition is filed may require
20 ~~such~~ testimony as it deems necessary, and the production, for the
21 use of the court and without expense of any kind to the petitioner,
22 of all records and reports relating to the petitioner and the crime
23 of which he *or she* was convicted, including the *following*:

24 (1) ~~The record of the trial, the trial.~~

25 (2) ~~The report of the probation officer, if any, the any.~~

26 (3) ~~The records of the prison, jail, detention facility, or other~~
27 ~~penal institution from which the petitioner has been released~~
28 ~~showing his or her conduct during the time he or she was there,~~
29 ~~including the records of the penal institution or institution, jail, or~~
30 ~~agency doctor and psychiatrist, the psychiatrist.~~

31 (4) ~~The records of the parole officer concerning him if he the~~
32 ~~petitioner if the petitioner was released on parole, records of the~~
33 ~~probation officer concerning the petitioner if the petitioner was~~
34 ~~released on postrelease community supervision or mandatory~~
35 ~~supervision, or the records of the Youth Authority Department of~~
36 ~~Corrections and Rehabilitation, Division of Juvenile Facilities~~
37 ~~concerning him if he has the petitioner if the petitioner had been~~
38 ~~committed to the authority, and that authority.~~

39 (5) ~~The written reports or records of any other law enforcement~~
40 ~~agency concerning the conduct of the petitioner since his the~~

1 *petitioner's release on ~~probation or~~ probation, parole, postrelease*
2 *community supervision, or mandatory supervision, or discharge*
3 *from custody. ~~All persons~~*

4 (b) *A person having custody of any ~~such of the~~ records described*
5 *in subdivision (a) shall make them available for the use of the court*
6 *in the proceeding.*

7 SEC. 11. Section 4852.21 of the Penal Code is amended to
8 read:

9 4852.21. (a) ~~Any~~ *A person to whom this chapter applies shall,*
10 *prior to ~~his~~ discharge or release on parole from a state prison or*
11 *other state penal institution or agency, or prior to discharge or*
12 *release on postrelease community supervision or mandatory*
13 *supervision from a county jail, be informed in writing by the*
14 *official in charge of the place of confinement of ~~his~~ the person's*
15 *right to petition for, and of the procedure for filing the petition for;*
16 *and obtaining, a certificate of rehabilitation and pardon pursuant*
17 *to this chapter.*

18 (b) *Prior to dismissal of the accusatory pleading pursuant to*
19 *Section 1203.4, the defendant shall be informed in writing by the*
20 *clerk of the court dismissing the accusatory pleading of the*
21 *defendant's right, if any, to petition for, and of the procedure for*
22 *filing a petition for; and obtaining, a certificate of rehabilitation*
23 *and pardon pursuant to this chapter.*

24 SEC. 12. Section 41500 of the Vehicle Code is amended to
25 read:

26 41500. (a) ~~No~~ *A person shall not be subject to prosecution for*
27 *any a nonfelony offense arising out of the operation of a motor*
28 *vehicle or violation of this code as a pedestrian ~~which~~ that is*
29 *pending against him or her at the time of his or her commitment*
30 *to the custody of the ~~of Corrections or the Department of the Youth~~*
31 *Authority Secretary of the Department of Corrections and*
32 *Rehabilitation, the Division of Juvenile Justice in the Department*
33 *of Corrections and Rehabilitation, or to a county jail pursuant to*
34 *subdivision (h) of Section 1170 of the Penal Code.*

35 (b) *Notwithstanding any other provisions of law to the contrary,*
36 *no law, a driver's license shall not be suspended or revoked, nor*
37 *shall and the issuance or renewal of a license shall not be refused*
38 *as a result of a pending nonfelony offense occurring prior to the*
39 *time a person was committed to the custody of the ~~Director of~~*
40 *Corrections or the Department of the Youth Authority Secretary*

1 *of the Department of Corrections and Rehabilitation, the Division*
2 *of Juvenile Justice of the Department of Corrections and*
3 *Rehabilitation, or a county jail pursuant to subdivision (h) of*
4 *Section 1170 of the Penal Code, or as a result of a notice received*
5 *by the department pursuant to subdivision (a) of Section 40509*
6 *when the offense—~~which~~ that gave rise to the notice occurred prior*
7 *to the time a person was committed to the custody of the—~~Director~~*
8 *~~of Corrections or the Department of the Youth Authority~~ Secretary*
9 *of the Department of Corrections and Rehabilitation or the*
10 *Division of Juvenile Justice of the Department of Corrections and*
11 *Rehabilitation.*

12 (c) The department shall remove from its records—~~any~~ notice
13 received by it pursuant to subdivision (a) of Section 40509 upon
14 receipt of satisfactory evidence that a person was committed to
15 the custody of the—~~Director of Corrections or the Department of~~
16 ~~the Youth Authority~~ Secretary of the Department of Corrections
17 and Rehabilitation, the Division of Juvenile Justice of the
18 Department of Corrections and Rehabilitation, or a county jail
19 pursuant to subdivision (h) of Section 1170 of the Penal Code,
20 after the offense—~~which~~ that gave rise to the notice occurred.

21 (d) The provisions of this section shall not apply to—~~any~~ a
22 nonfelony offense—~~wherein~~ if the department is required by this
23 code to immediately revoke or suspend the privilege of—~~any~~ a
24 person to drive a motor vehicle upon receipt of a duly certified
25 abstract of the record of—~~any~~ a court showing that the person has
26 been convicted of that nonfelony offense.

27 (e) The provisions of subdivisions (a), (b), and (c) do not apply
28 to—~~any~~ an offense committed by a person while he *or she* is
29 temporarily released from custody pursuant to law or while he *or*
30 *she* is on parole *or postrelease community supervision*.

31 (f) The provisions of subdivisions (a), (b), and (c) do not apply
32 if the pending offense is a violation of Section 23103, 23152, or
33 23153.

34 SEC. 13. If the Commission on State Mandates determines
35 that this act contains costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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